

## **Chapter 3**

### **Inspector General Records**

#### **3-1. Nature of inspector general records**

- a.* All IG records, including USAR IG records and ARNGUS IG records concerning Federal matters, are the property of the SA. IGs maintain these records on behalf of the SA. The designated release authority for all IG records is TIG.
- b.* IG records are privileged documents and contain sensitive information and advice. Unauthorized use or release of IG records can seriously compromise IG effectiveness as a trusted adviser to the commander or State AG and may breach IG confidentiality (see para 1-12).
- c.* Army IG records are any written or recorded IG work-product created during the course of an IG assistance case, inquiry, inspection, and investigation. An IG record includes, but is not limited to, correspondence or documents received from a witness or a person requesting assistance, IG reports, IGMET data or other computer automatic data processing (ADP) files or data, and IG notes and working papers.
- d.* Non-IG records are documents contained within the IG file created by other Army or Federal agencies or documents from outside the Federal Government. While these records may be under the control of the IG for purposes of conducting assistance, inquiries, inspections, and investigations, release of these records remains under the jurisdiction of the originating organization. Requests for non-IG records will be referred to the appropriate custodian for release determination and direct response to the requester. For release of IG records or information to DA investigators, see paragraph 3-6b(3).
- e.* Only TIG and DTIG or their designated representatives (Legal Advisor and Deputy Legal Advisor) have the authority to release IG records (see para 3-5).

#### **3-2. Protection of inspector general records**

- a.* IGs will mark all unclassified IG records "For Official Use Only (FOUO)" and "Dissemination is prohibited except as authorized by AR 20-1." The markings will appear on all IG reports starting on the bottom of the front cover, on every page that contains IG sensitive information, and on the outside of the back cover in accordance with paragraph 4-200 of AR 25-55.
- b.* When IG records are released outside IG channels (see paras 3-6 and 3-7), IGs will mark them as follows: "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemption(s) (number(s)) apply." The following exemptions may apply to IG records:
  - (1) Inspection reports—Exemption 5.
  - (2) ROI—Exemptions 1, 2, 5, 6, and 7.
  - (3) ROII—Exemptions 1, 2, 5, 6, and 7.
  - (4) Inspector General Action Requests—Exemptions 1, 2, 5, 6, and 7.
- c.* IGs will mark classified IG records in accordance with AR 380-5, AR 25-55, and all other applicable security classification guides. IGs will also mark these records as follows: "When declassified, document becomes For Official Use Only. Dissemination is prohibited except as authorized by AR 20-1."
- d.* IGs will mark each magnetic tape, floppy disk, or similar type of data storage device containing IG data with the appropriate DA label (see AR 25-55 and AR 380-5).
- e.* Original copies of IG correspondence designed to leave IG control (such as replies to correspondence or subjects and letters to MC) are not given protective markings and treatment. However, IGs will protectively mark file copies of such correspondence if that correspondence leaves IG channels.
- f.* Internal management documents designed to circulate within an IG office and that govern routine matters do not require protective markings; however, they are still protected as FOUO material.
- g.* Each part of an electrically transmitted message containing FOUO information will be marked appropriately. Unclassified messages containing FOUO information will contain the acronym "FOUO" before the beginning of the text.
- h.* The disposition/destruction of IG records will be in accordance with AR 25-400-2. Refer to the Army Records 22 AR 20-1 • 1 February 2007 Information Management System record retention schedule at <https://www.arims.army.mil> for further information. In addition, the destruction of IG records must conform to AR 25-55, chapter 4, and AR 380-5, as appropriate.

#### **3-3. Use of inspector general records for adverse actions**

- a.* Inspector general records will not be used as the basis for adverse action (see glossary) against individuals, military or civilian, by directing authorities or commanders except when specifically authorized by the SA, the Under Secretary of the Army, the CSA, the VCSA, or TIG. Requests for such use will be submitted to TIG. For a request to use the results of an IG investigation for adverse action, the request must state why a follow-on investigation would be unduly burdensome, disruptive, or futile.

Follow-on investigations preclude the necessity of using IG records for adverse action and thereby safeguard the image and integrity of the IG System.

*b.* When an IG record is used as the basis for adverse action, the individual concerned may be entitled to additional due-process rights as outlined below:

(1) *Nonsenior officials.* IG records will not be used as a basis for an adverse action that will be filed in a nonsenior official's official personnel record unless the issuing authority has obtained approval as outlined in paragraph *a* above. In addition, the nonsenior official must have the opportunity to review the IG records that serve as the basis for the proposed filing and make a written statement in rebuttal or to decline in writing the opportunity to make such a statement.

(2) *Senior officials.* IG records may be used as the basis for an adverse action against a senior official with TIG or DTIG approval as outlined in subparagraph 3–3*a*. The adverse action must ultimately afford the senior official due process protection, to include the opportunity to review the IG records that serve as the basis for the adverse action and make a written statement in rebuttal or to decline in writing the opportunity to make such a statement.

*c.* Release of the IG record may breach the confidentiality of witnesses and/or IG opinions, conclusions, and recommendations. Commanders, State AGs, and directing authorities must consider this impact when deciding whether to request the use of an IG record for adverse action. Extreme care will be taken to ensure that any adverse action taken by a supervisor against a subordinate does not constitute a reprisal against a “whistleblower” and is otherwise taken within the guidelines of the Whistleblower Protection Act (see 5 USC 2302 and 10 USC 1587) and the Whistleblower Protections for Members of the Armed Forces (see 10 USC 1034). Chapter 8 provides specific guidance in situations in which IG investigations will be directed instead of other types of investigations such as those conducted by USACIDC or pursuant to AR 15–6.

*d.* When considering the use of IG records as the basis for adverse action, the IG office with the records will submit the request to the Records Release Office, The U.S. Army Inspector General Agency (ATTN: SAIG–ZXR), 2511 Jefferson Davis Highway, Suite 12600, Arlington VA 22202–3912, describing precisely which portions of the IG records are requested and why. Assistance in determining whether an action is deemed adverse may be obtained from the servicing legal office or the DAIG Legal Advisor. The IG will also encourage consultation between the commander concerned and the servicing legal office regarding the need for IG records as the basis for the action contemplated and the availability of other evidence to serve the same purpose (see fig 3–1).

*e.* Commanders will not initiate a flagging action for individuals under IG investigation because such an action could be construed as adverse in nature. Commanders seeking approval for the use of IG records for adverse action may flag the individual in accordance with AR 600–8–2 immediately upon initiating the request.

*f.* When IG records are approved for use as the basis for adverse action, only the minimum amount of evidence necessary from the record will be used—preferably from documentary evidence and testimony for which consent to release was obtained. IG opinions, conclusions, and recommendations are not evidence and will not be used as a basis for adverse action.

#### **3–4. Request for inspector general records**

Requests for IG records must be in writing and submitted for action to The U.S. Army Inspector General Agency (ATTN: SAIG–ZXR), 2511 Jefferson Davis Highway, Suite 12600, Arlington, VA 22202–3912.

#### **3–5. Release authority for inspector general records**

*a.* Only TIG, DTIG, or their designated representatives (Legal Advisor and Deputy Legal Advisor) may approve the release of IG records outside IG channels except as set forth in paragraphs 3–6*b*(1) through 3–6*b*(3).

*b.* The chief of the DAIG Assistance Division may release attachments to DOD Hotline complaints received from the DODIG to Army Staff principals—and the complaint plus attachments to USACIDC if the complainant is not from within USACIDC—when the DODIG has redacted the complaint to protect confidentiality and/or the chief of the DAIG Assistance Division has determined that release of the attachments does not compromise complainant confidentiality.

*c.* Release of IG records will only be made after case closure. The Inspector General will grant access to IG records under the following two separate records-release categories and subject to the provisions stipulated below:

(1) Official use of inspector general records within the DA.

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(2) Release of inspector general records outside the DA.

### **3–6. Official use of inspector general records within Department of the Army**

a. TIG, DTIG, the legal advisor, and the deputy legal advisor may release applicable portions of IG records to individuals, commands, or agencies within DA having a need for these records in the official performance of their duties as an FOUO release. Requests for an “Official Use” release within DA must be in writing and reasonably identify the IG records sought (that is, name of the complainant/subject, date of the investigation, where the IG investigation was conducted, and so forth). The request must also state the specific purpose or intended use of the IG records. Persons and agencies within DA may obtain IG records for official use by providing their local detailed IG, or the IG office of record, a written request that states clearly the reason they need the IG records. These requests will be forwarded to the U.S. Army Inspector General Agency (ATTN: SAIG–ZXR), 2511 Jefferson Davis Highway, Suite 12600, Arlington, VA 22202–3912, in the format prescribed in paragraph 3–7a(1). The IG will retain written notations concerning the release and its justification with the record-file copy of the case. The following restrictions apply to all IG records requested for official use by individuals, commands, or agencies within DA and will be stated in a transmittal letter to the DA recipient.

- (1) TIG or DTIG must approve FOUO releases in support of an adverse action.
- (2) IG records will not be reproduced or further disseminated without specific permission of TIG, who may provide permission in the transmittal letter if appropriate.
- (3) Use or attachment of IG records as exhibits or enclosures to records of other DA offices or agencies is not authorized without written approval of TIG.
- (4) Commanders at any level will not use IG records to compare commands or commanders.
- (5) Rating officials and supervisors may not cite inspection findings, inquiry results, or other IG information that would not otherwise be readily available in non-IG records or sources in an evaluation report, performance appraisal, or other evaluation that is maintained in official personnel records and either is or will become an adverse action. ACOMs/ASCCs/DRUs may request to use IG inspection results for adverse action from inspections conducted by the DAIG Information Assurance, Intelligence Oversight, and Technical Inspections Divisions.
- (6) IG records provided to DA recipients will be returned to the U.S. Army Inspector General Agency (ATTN: SAIG–ZXR), 2511 Jefferson Davis Highway, Suite 12600, Arlington, VA 22202–3912, when the records have served the requested purpose. These records are only on loan to the recipient and remain under TIG control. Recipients of IG records are not to incorporate them into a system of records subject to the PA because the recipient’s system of records may not be subject to the same PA exemptions as the IG system of records.
- (7) The requesting agency must be designated in the “Routine Uses” section of the IG system of records notice in the Federal Register to receive the records without the consent of individuals mentioned in the IG records. The term “routine use” means that the requesting agency will use the record for the stated purpose. The release of IG records for “Routine Uses” is strictly discretionary.

b. As limited exceptions to subparagraph 3–6a, command IGs may release IG records FOUO as follows:

- (1) *Release of an ROI or ROII to the directing authority for informational purposes only and not for adverse action.* For the use of a ROI or ROII for adverse action, see paragraph 3–3. An IG ROI contains privileged and sensitive information. IGs will strictly control ROIs and ROIIs when provided for official use. Review of IG reports will be restricted to the absolute minimum number of people with a strict need to review the report in the performance of official Army duties in order to make a recommendation and decision for appropriate action. Generally, persons who are only responsible for implementing a decision based on an IG report do not need to review the report.
- (2) *Release of an IG inspection report to the directing authority and to other Army agencies and commands as required.* Once the IG releases the report to the commander, the commander may in turn release the redacted report to members of his or her own staff and/or command or to other Army commands or agencies as necessary.
- (3) *Release of IG records or information to DA investigators.* DA investigators include personnel such as investigating officers, officers conducting financial liability investigations of property loss, CID investigators, military police (MP) investigators, and similar investigators performing law enforcement or other investigations under Army regulations and outside IG channels beyond the limitations outlined in subparagraph a above. These personnel are entitled to IG information described below when that information is relevant to an authorized investigation. They will not be provided additional information without approval of TIG or a higher authority.

(a) An IG may inform the investigator either orally or in writing on the nature of the allegations or matters the IG office examined while being careful not to be judgmental about the allegations or to reveal any IG findings, opinions, conclusions, or recommendations.

(b) An IG may release documentary evidence that is readily available to any DA investigator and that the IG did not receive in confidence. This evidence includes finance and personnel records, travel vouchers, motel and restaurant receipts, and so forth. "Readily available" includes documents that would be readily available from the source but have been lost, destroyed, retired, or altered after the IG obtained them.

(c) An IG may identify by name verbally or in writing those witnesses who have information relevant to the investigation and explain how they are relevant with a brief oral synopsis of their testimony. Where possible, the IG 24 AR 20-1 • 1 February 2007 will not reveal which witness is the complainant (see para 1-12). Written statements, transcripts, and recorded tapes taken by the IG will not be released.

(4) *Release of DAIG inspection reports.* Unless otherwise stated, IGs may share with their commands DAIG inspection reports posted to the IGMET Web page if local commanders and proponents have a valid interest. The IGs will limit distribution of these reports using the FOUO classification.

c. Other examples of FOUO releases to DA entities that the DAIG Legal Advisor may approve include—

(1) IG records requested by a board in relation to an appeal of an adverse administrative action, evaluation report, or petition for correction of records where no due-process right of access exists.

(2) Release of IG records or information to DA investigators. DA Investigators include investigating officers, officers conducting financial liability investigations of property loss, CID investigators, and MP investigators performing law enforcement or other investigations under Army regulations and outside IG channels beyond the limitations outlined in subparagraph a above. If the investigator intends to incorporate or refer to the IG record in the investigation results, or the record requested contains a substantiated allegation, TIG or DTIG approval is required for release.

(3) Requests for IG records by Government representatives in support of a judicial proceeding. The request must be in writing and sent to the Records Release Office (SAIG-ZXR). The request must reasonably describe the records sought. Release of IG records to the Government representative is for review only. The representative will not reproduce or disseminate the records without written consent of TIG or DTIG. If the IG records become the subject of discovery, procedures set forth in paragraph 3-7a(1) will apply. The Records Release Office may release responsive records in the IG file, to include those originating from other offices, upon request from the Government representative in litigation where the United States is the defendant.

(4) Requests for records from the General Officer Management Office acting as the agent of the CSA and VCSA in general officer assignment, promotion, and other personnel matters.

### **3-7. Release of inspector general records outside Department of the Army**

a. *General.* Release and use of IG records outside DA can be for official or unofficial purposes.

(1) *Requests for nonofficial use.*

(a) *FOIA and PA requests for release of IG records.* The FOIA is a statutory right of access to Federal Government information. The Government's policy is to disclose requested records unless exempt or excluded in 5 USC 552, the Privacy Act of 1974, a code of fair information practices that regulates the collection, maintenance, use, and dissemination of personal information by Federal Government agencies. TIG is the initial denial authority, and the legal advisor and the deputy legal advisor are the designated representatives for records requested under the FOIA. TIG may delegate release authority to other personnel in the Records Release Office on a by-name basis based upon a review of their qualifications and duty assignment. TIG is the access and amendment refusal authority for records requested under the PA for IG records. Procedures for requesting records and processing requests are as follows:

1. Requests must be in writing and reasonably identify the IG records sought. When possible, IGs will assist requesters in identifying the specific information they are seeking, thereby limiting the volume of records copied and processed for release.

2. Requests for IG records under the FOIA must comply with AR 25-55.

3. Requests for records under the PA, which will also be processed as a FOIA request, must comply with AR 340-21.

4. The IG will promptly notify the requester in writing that the IG has received the request and referred it to TIG for direct reply to the requester.

5. Forward the original request within 10 working days to the U.S. Army Inspector General Agency (ATTN: SAIG-ZXR), 2511 Jefferson Davis Highway, Suite 12600, Arlington, VA 22202-3912, with the responsive records using one of the following formats:

- a. If the responsive record is 30 pages or less, fax one copy to SAIG-ZXR or scan the file and send it by e-mail. Contact the DAIG Records Release Office (SAIG-ZXR) for the correct e-mail address.
- b. If the responsive record exceeds 30 pages, send one copy of the record preferably by mail, commercial courier, or a similar method that will ensure 3-day delivery.
- c. All records forwarded must be legible, single-sided, and straight.
- d. In its forwarding memorandum, the IG office of origin will state the date that the office received the request. The memorandum will include any specific local concerns or recommendations about the request and a list of witnesses who did not consent to release of their testimony. The memorandum will also identify by name the source (that is, complainant, subject, or witness) of each non-IG work-product forwarded by the IG office. The IG office of origin will promptly notify the requester in writing that the IG has received the request and that the IG has referred it to the DAIG Records Release Office at the U.S. Army Inspector General Agency (ATTN: SAIG-ZXR), 2511 Jefferson Davis Highway, Suite 12600, Arlington, VA 22202-3912. Telephone coordination with SAIG-ZXR is encouraged, especially before copying and forwarding voluminous exhibits to a requested record.
6. IGs will grant expedited processing of the FOIA request to a requester when a compelling need for the information exists. Compelling need is described as— AR 20-1 • 1 February 2007 25
  - a. Failure to obtain the records on an expedited basis could reasonably pose an imminent threat to the life or physical safety of an individual.
  - b. Representatives of the news media who are primarily engaged in disseminating information to inform the public concerning actual or alleged Federal Government activity urgently need the information. Urgently needed information means that the value of such information will be lost if not disseminated quickly (for example, a breaking news story of general public interest).
  - c. Imminent loss of substantial due-process rights.
  - d. Humanitarian needs to promote the welfare and interests of mankind.
- (b) *Requests for IG records by an MC.* IGs will treat requests for copies of IG records by an MC, on his or her own behalf or on the behalf of a constituent, as a request for records under the FOIA or the PA, as appropriate (see para 3-7a(1)).
- (c) *Release of IG witness statements.* Individuals who have provided statements must submit an FOIA request to the IG office of record to obtain a copy of their own testimony. Upon receipt of the written FOIA request, the IG office of record must forward the request for action in the format prescribed in paragraph 3-7a(1).
- (d) *Miscellaneous requests.* As a limited exception to 3-7a(1), IGs may release information extracted from IG records to respond to requests for assistance, advice, or information; answer complaints; and prepare closure letters. IGs may use personal information in such responses only when the individual to whom the information pertains has given written consent to its use (see AR 340-21, para 3-3, for examples of personal information that IGs may release under FOIA). IGs will consult the DAIG Records Release Office or the command legal advisor when they are uncertain whether the use of personal information will cause either an unwarranted invasion of privacy or a breach of IG confidentiality.
- (2) *Requests from outside DA for IG records for official use.* After telephonic coordination for action, forward these requests and the responsive records in the format outlined in paragraph 3-7a(1)(a) to the DAIG Records Release Office at the U.S. Army Inspector General Agency (ATTN: SAIG-ZXR), 2511 Jefferson Davis Highway, Suite 12600, Arlington, VA 22202-3912.
- (a) *Use of IG records to respond to requests for information from the White House and Congress while acting as a body (or through its committees, joint committees, or subcommittees of either).* Information may be released by the Records Release Office (SAIG-ZXR) in accordance with AR 340-21 and AR 1-20 under FOIA, 5 USC 552, DODD 5400.7-R, and AR 25-55. Before release, the Chief of Legislative Liaison (1600 Army Pentagon, Washington, DC 20310-1600), or the White House Liaison Office (ATTN: DAEC-CA (OSA-WHLO)), 100 Army Pentagon, Washington, DC 20310-0100), as appropriate, will be informed of the action contemplated. Replies will be fully responsive but limited to the immediate scope of the inquiry. No congressional request may be fully denied without prior approval of the SA. If the directing authority believes that the requested information will not be released, the request, with all relevant information and the directing authority's recommendations, will be forwarded to the U.S. Army Inspector General Agency (ATTN: SAIG-ZXR), 2511 Jefferson Davis Highway, Suite 12600, Arlington, VA 22202-3912. Requests for copies of IG records by an MC on his or her own behalf or on the behalf of a constituent will be treated as a request for records under the FOIA or the PA as appropriate (see para 3-7a(1)(b)).

*(b) Use of IG records for review by investigative personnel outside of DA.* Investigative personnel from the office of the DODIG; Office of Personnel Management; GAO; OSC; or the Merit Systems Protection Board may review IG records in the IG office having possession of records relevant to an ongoing agency investigation or audit. Requests from these agencies for copies of IG records must be submitted in writing and state the reason a copy is required. Forward such requests in the format prescribed in subparagraph 3–7a(1) (a) to the DAIG Records Release Office, HQDA (ATTN: SAIG–ZXR), 2511 Jefferson Davis Highway, Arlington, VA 22202–3912. If the investigator intends to include or refer to the IG record in the investigative report, or the requested record contains a substantiated allegation, TIG or DTIG approval is required. Under DODD 5106.1, the DODIG cannot be denied access to information.

*(c) Release of Information with DOD Hotline referral cases.* When DAIG receives case referrals from the DOD Hotline Program, DAIG must ensure “necessary controls are in place to provide maximum protection for the identity of the hotline users” (DOD Instruction (DODI) 7050.7, para 6.2.4). Paragraph 3–7a(1)(d) of this regulation governs the release of information from these referrals in order to respond to the complainant’s concern.

*(d) Subpoenas and similar court orders.* U.S. Army Legal Services Agency, Litigation Division (JALS–LT) is the proponent for all aspects of litigation involving DA personnel. (See AR 27–40 for specific guidance; AR 27–40, appendix C, contains information on litigation extracted from DODD 5405.2.)

1. DOD policy is that official information will generally be made reasonably available for use in Federal and State courts and by other governmental bodies. The only exception concerns information that is classified, privileged, or otherwise protected from public disclosure. IG records are, however, the property of the SA. Thus, IG personnel may not disclose any official information from IG files or any information acquired during the performance of IG duties without prior written approval from TIG.

2. When an IG receives a subpoena, court order, or request for attendance at a judicial or quasijudicial proceeding or a request for an interview that the IG reasonably believes is related to actual or potential litigation, and the information 26 AR 20–1 • 1 February 2007 sought is from DA files or is known to the IG as a result of official duties, the IG will immediately notify the local SJA and the DAIG Legal Advisor within 48 hours. A subpoena must never be ignored.

3. IGs will inform the individual seeking the information that—

a. Requesters must set forth, in writing and with specificity, the nature and relevance of the official information sought.

b. Only TIG or a higher authority within DA or DOD may authorize the release of IG records. IGs will refer requesters to part 97, title 32, of the Code of Federal Regulations (32 CFR 97) for detailed instructions.

4. If a response to a subpoena or court order is required before TIG authorizes release, the IG will advise the official seeking the release of DOD, DA, and TIG policy; inform the requesting official that the request is being reviewed expeditiously; and seek a stay of the subpoena or order pending a final determination.

5. If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the order or subpoena, the IG will notify the local SJA and the DAIG Legal Advisor immediately. In those rare cases in which circumstances require a response before TIG acts, the IG will respectfully decline to comply with the subpoena or order (see U.S. ex. rel. Touhy v. Ragen, 340 US 462 (1951)). IGs may ordinarily expect judges to respect the military officer’s dilemma of whether to comply with the orders of a superior military authority of the executive branch not to release until authorized or with subpoenas and other court orders of the judicial branch.

*b. Requests for IG records for discovery in a judicial proceeding.* Requests for IG records by an accused and defense counsel through Government counsel, or by government counsel, intended for disclosure as part of a judicial proceeding, are discovery requests. Discovery is the disclosure of relevant information between opposing counsel before and during litigation. The following procedures apply:

(1) Defense discovery requests for IG records must be in writing and submitted to the Government representative in the case.

(2) The Government representative will forward the request to the Records Release Office (SAIG–ZXR) for action. The Records Release Office (SAIG–ZXR) will release requested IG records to the Government representative for a determination of relevancy.

(3) The Government representative will review the IG records to determine which portion(s), if any, of the IG records are relevant to the case. If the Government representative determines that the IG records are relevant to the case, the Government representative will submit a written request to the Records Release

Office (SAIG-ZXR) for release of relevant portions of IG records to the Government counsel and defense counsel.

(4) The Records Release Office (SAIG-ZXR) will redact nonrelevant information and information exempt under FOIA and PA from requested IG records and will forward the redacted records to the Government representative. The Government representative is authorized to release the redacted records to the defense counsel before any hearing in response to the discovery request.

(5) If the Government representative determines that the IG records requested by the defense counsel are not relevant to the case, the Government counsel must assert the IG privilege to bar disclosure of the IG records in order to protect the identity and privacy interests of the alleged wrongdoer and witnesses.

(6) If the defense counsel objects to the “not relevant” determination made by the Government representative or limited discovery provided through release of the redacted copy, the Government representative can request an *in camera* review by the presiding judge.

(7) In the event the presiding judge orders the release of the IG records (in their entirety and unredacted), the Government representative must obtain a “protective order” from the judge to prevent the accused or the defense counsel from making further dissemination of the IG records.

(8) Release of IG records must occur only after an *in camera* review is completed, a relevancy determination made, and an appropriate protective order issued by the judge.

(9) The accused or defense counsels may submit a FOIA request for records beyond those provided under the discovery process. IG records will not be made available to individuals or their counsel for use in administrative actions, military justice actions, or appeals unless TIG determines that the individual has a right of access under minimum due process because the IG records are the basis for the action taken against the individual.

(10) IGs will process under FOIA other requests for IG records by counsel, the accused, appellants, and respondents for the purpose of appealing an administrative action (see para 3-7a(1)(a)).

*c. Requests by labor organizations.* The right of access—5 USC 7114(b)(4))—requires agencies to furnish labor organizations with information related to collective bargaining and includes IG records that meet the criteria listed in the statute. IGs will send requests for IG records by labor organizations through the servicing legal office to obtain an opinion whether the requested documents are releasable under 5 USC 7114. IGs will forward the request, a copy of the requested records, the written opinion of the labor law attorney, and a copy of the collective bargaining agreement to the DAIG Records Release Office in the format prescribed in subparagraph 3-7a(1)(a). Advance telephonic coordination with the Records Release Office will prove helpful. This statutory right to agency information is in addition to access rights under the FOIA. IG records that do not pertain to subjects within the scope of collective bargaining will not be released under 5 USC 7114(b)(4) but will be processed under the FOIA.

*d. Use of IG records to respond to requests from the media.* IGs are not authorized to discuss specific inspections, AR 20-1 • 1 February 2007 27 assistance cases, inquiries, or investigations with media representatives. IGs will refer media inquiries to the local public affairs officer (PAO). IGs will neither confirm nor deny that a specific subject or topic is or has been under investigation or inquiry. There is no prohibition against an IG discussing the general functioning of the IG System or the general and functional aspects of the positions after coordination with the local PAO. IGs will not answer questions concerning hypothetical situations that might occur in performing their duties. Requests for IG records from media representatives will be processed under FOIA (see para 3-7a(1)(a)).

### **3-8. Amendment of inspector general records**

*a.* Persons will direct requests for the amendment of IG records to—

(1) The authority that directed the record be made (for example, the directing authority of an ROI) when the request concerns a factual portion of the IG record (see 3-8b).

(2) TIG or DTIG when the request concerns matters of IG opinion, judgment, or conclusions in the record for cases in which DAIG is the office of record. (See *c* below.)

(3) The command’s IG when the request concerns matters of IG opinion, judgment, or conclusions in the record of a case for which that office is the office of record.

*b.* Requests to amend factual portions of agency records are made under the provisions of 5 USC 552a(f)(4) and AR 340-21.

(1) Officials receiving requests for amendments of IG records will follow the procedures in AR 340-21.

(2) Officials may amend personal information on individuals contained in the record provided the request is

adequately supported by documentary evidence. This amendment authority is limited to those portions of the record containing facts (for example, the spelling of a name). It does not include authority to amend those portions containing opinions, judgments, or conclusions.

(3) Amendment requests for which the directing authority recommends denial must be supported by memoranda and forwarded to the U.S. Army Inspector General Agency (ATTN: SAIG-ZXR), 2511 Jefferson Davis Highway, Suite 12600, Arlington, VA 22202-3912.

(4) As the access and amendment refusal authority designated in AR 340-21, TIG is the first official who may deny requests to amend IG records.

c. All requests for amendment of IG records concerning matters of opinion, judgment, or conclusion will be forwarded to the Records Release Office for referral to the appropriate division within DAIG for review prior to action by TIG or DTIG. Included will be one copy of the record to which the amendment is sought; any documents in support of or related to the disputed record; acknowledgement to the requester; and recommendations, with supporting rationale, concerning whether the amendment will be granted or refused. Requests for amendments concerning opinion, judgment, or conclusion will only be granted upon a showing of fraud, mistake of law, mathematical miscalculation, or newly discovered evidence.

### **3-9. Records maintenance period**

IGs maintain IG records in accordance with AR 25-400-2 and additional guidance furnished by the DAIG Information Resource Management Division (IRMD).